

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10581 NMG

YVETTE LOCKHART-BEMBERY,)
Plaintiff)
VS.)
TOWN OF WAYLAND POLICE DEPARTMENT,)
ROBERT IRVING, in his capacity as CHIEF OF THE)
WAYLAND POLICE DEPARTMENT and)
DANIEL SAURO)
Defendants)

**MOTION OF DEFENDANTS TO STRIKE PLAINTIFF'S SUPPLEMENT TO
THE PRE-TRIAL MEMORANDUM**

The Defendants, Town of Wayland Police Department, Robert Irving, and Daniel Sauro, hereby move to strike the Plaintiff's Supplement to the Pre-Trial Memorandum.

In support thereof, the Defendants state that the Plaintiff recently forwarded a letter and document entitled "Plaintiff's Supplement to the Pre-Trial Memorandum," dated December 6, 2005 to the Defendants. In the Plaintiff's Supplement to the Pre-Trial Memorandum, the Plaintiff listed two supplemental witnesses (i.e. Darlene McDaniel and Victoria Woodard). According to the Plaintiff's letter, which accompanied said Supplemental Pre-Trial Memorandum, these two witnesses are expected to testify that they passed the Plaintiff when she was stopped along side of the road and would further testify that the Plaintiff's vehicle was off the road and not blocking any traffic and that in any event, the traffic was light and not obstructed or delayed in any fashion.

In conversation with counsel, the Defendants have been informed that the Plaintiff just recalled these two witnesses. The Plaintiff submitted automatic disclosure pursuant to Local Rule 26.2(A) on June 23, 2004, filed a Supplemental Automatic Disclosure on November 9, 2004, and submitted her answers to interrogatories signed under oath on October 25, 2004. Further, the Plaintiff was deposed on February 7, 2005. At no time has the Plaintiff disclosed the names of these two witnesses during the discovery phase of this case. The Plaintiff has not provided the defendants an opportunity to depose these two witnesses within the discovery deadline imposed by this Court. In addition, according to the plaintiff the addresses of these two new witnesses, provided by counsel, are of questionable value.

Therefore, the Defendants now move to strike these two witnesses and preclude them from testifying at any trial in the above-referenced matter.

Respectfully Submitted,
Defendants,
Town of Wayland Police Department, Robert
Irving, and in his capacity of Chief of the
Wayland Police Department Daniel Sauro,
By Their Attorney,

/s/ Jeremy I. Silverfine
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Dated: December 20, 2005